



**Attorney General
Betty D. Montgomery**

September 5, 1996

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Via Overnight Mail

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: *In the Matter of Implementation of the
Non-Accounting Safeguards of Section 271
and 272 of the Communications Act of 1934,
as amended and Regulatory Treatment of
LEC Provision of Interexchange Services
Originating in the LEC's Local Exchange
Area, CC Docket No. 96-149.*

Dear Mr. Caton:

Enclosed please find the original and twelve copies of the **Reply Comments and Motion for Extension of Time of the Public Utilities Commission of Ohio** in the above-referenced matter. Please return a time-stamped copy to me in the enclosed stamped, self-addressed envelope.

Thank you for your assistance in this matter.

Respectfully submitted,

BETTY D. MONTGOMERY
Attorney General of Ohio

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AEH/kja
Enclosure

cc: Janice Myles, Common Carrier Bureau
International Transcription Services, Inc.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of:)
Implementation of the Non-Accounting)
Safeguards of Sections 271 and 272 of the)
Communications Act of 1934, as amended;)
and Regulatory Treatment of LEC Provision)
of Interexchange Services Originating in the)
LEC's Local Exchange Area)

FCC MAIL ROOM

CC Docket No. 96-149

MOTION FOR EXTENSION OF TIME
OF THE
PUBLIC UTILITIES COMMISSION OF OHIO

The Public Utilities Commission of Ohio (PUCO) requests that the Federal Communications Commission (FCC) permit the PUCO to file its Comments in the above referenced proceeding on September 6, 1996, five days after the due date of August 30, 1996. The PUCO is aware of the importance of timely submission of comments and reply comments. The PUCO routinely reviews submissions to the FCC at its regularly scheduled meetings and was unable to complete this review by the original date. This extension will not prejudice any party, and will permit the FCC to have a more complete record on which to decide issues.

Respectfully submitted,

BETTY D. MONTGOMERY
Attorney General of Ohio



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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
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Communications Act of 1934, as Amended)	
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and)	
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Regulatory Treatment of LEC Provision)	
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LEC's Local Exchange Area)	

**EXECUTIVE SUMMARY OF THE
REPLY COMMENTS OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In these reply comments, the Public Utilities Commission of Ohio (PUCO) respectfully maintains that the FCC should provide the greatest deference possible to states on matters essentially intrastate in nature. As a result, the FCC should permit individual states to require additional non-accounting safeguards pertaining to the relationships of BOCs and their affiliates in order to establish and maintain a viable competitive marketplace for local exchange and other intrastate services. As indicated in our initial comments and reaffirmed based on the comments of other parties, there are unique issues associated with the particular regulatory plan under which LECs operate at the state level and additional safeguards need to be devised by state, to reflect the unique circumstances of each company and plan. In fact, in Ohio alone, we have three LECs operating under alternative regulatory plans, each of which is different from the other. A "one size fits all" federal policy which

straitjackets states in implementing additional safeguards will, by definition, fail to recognize this level of uniqueness and innovation at the state level.

The PUCO submits that an overallocation of joint and common costs to the local exchange operations could result in inflated prices for cost-based interconnection, since rules promulgated by the FCC in CC Docket No. 96-98 establish that an appropriate allocation of joint and common costs is to be recognized in total element long run incremental cost studies (TELRIC) studies establishing interconnection rates. Moreover, if the FCC were to conclude that manufacturing, information services, and interLATA services were appropriately located within an affiliate which also provides local exchange service, the PUCO's concerns regarding the shifting of common costs to the BOC from the affiliate in the absence of structural safeguards would be compounded.

The PUCO generally endorses the FCC's proposals for implementing Section 272(b)(1) and Section 272(b)(3) as necessary to prevent anticompetitive behavior. The PUCO supports the positions taken by those commenters in this docket that the more rigorous standards established in the Computer II inquiry regarding structural separation and non-discrimination, rather than standards consistent with Computer III, be imposed by the FCC.

If the FCC were to interpret the language of Section 272 to permit administrative sharing, the misallocation of common costs could result in anticompetitive behavior not only in the interLATA market but also in the local exchange market. Countervailing regulatory considerations do require stringent separation of BOCs and their subsidiaries under these circumstances, and the FCC should remain steadfast in insisting on imbuing the concept of independent operation established in Section 272(b)(1) with tangible meaning.

The PUCO asserts that the underlying quality of service provided by the LEC to non-affiliates must be of the same quality as is provided to the affiliate. The PUCO has observed that entities seeking interconnection with incumbent LECs are handicapped in their knowledge of the latter's network design, and thus are not assured of obtaining the same quality of underlying service through their interconnection requests.

The PUCO reiterates its position that the FCC must assure that BOCs do not circumvent requirements intended to permit sustainable competitive entry by transferring existing network capabilities to an affiliate. The PUCO endorses the observations of AT&T Corporation that permitting BOCs to plan, engineer, and construct in-region interexchange facilities and services on an integrated basis with their local exchange business would subvert the 1996 Act's purposes.

**Before the
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of)	
Implementation of the Non-)	
Accounting Safeguards of Sections)	
271 and 272 of the)	CC Docket No. 96-149
Communications Act of 1934,)	
as amended;)	
)	
and)	
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Regulatory Treatment of LEC Provision)	
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in the LEC's Local Exchange Area)	

**REPLY COMMENTS OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

INTRODUCTION & BACKGROUND

The Public Utilities Commission of Ohio (PUCO) hereby submits its reply comments pursuant to the Federal Communications Commission's (FCC's) Notice of Proposed Rulemaking (NPRM) in CC Docket No. 96-149 (In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area).

In these reply comments, the PUCO responds to issues raised in comments filed in CC Docket No. 96-149 regarding the need for and degree of separation required between BOCs and their affiliates. The PUCO respectfully maintains, as it previously articulated in comments filed in this docket, that the FCC should provide the greatest deference possible to states on matters essentially intrastate in nature. Irrespective of whether Congress intended in the Communications Act of

1934, as amended (the Act) to consign a broader scope of authority to the FCC than has historically been deemed lawful, the FCC should permit individual states to require additional non-accounting safeguards pertaining to the relationships of BOCs and their affiliates in order to establish and maintain a viable competitive marketplace for local exchange and other intrastate services. As indicated in our initial comments and reaffirmed based on the comments of other parties, there are unique issues associated with the particular regulatory plan under which LECs operate at the state level and additional safeguards need to be devised by state to reflect the unique circumstances of each company and plan. In fact, in Ohio alone, we have three LECs operating under alternative regulatory plans, each of which is different from the other. A "one size fits all" federal policy which straitjackets states in implementing additional safeguards will, by definition, fail to recognize this level of uniqueness and innovation at the state level.

DISCUSSION

At page 6 of Ameritech's comments, the RBOC argues that BOC maintenance of bottleneck control of local exchange and access facilities would not enable cost misallocation or other anticompetitive conduct that would confer market power on the affiliate via the restriction of output. Assuming, *arguendo*, this to be the case, the PUCO submits that an overallocation of joint and common costs to the BOC could still result in inflated prices for cost-based interconnection, since rules promulgated by the FCC in CC Docket No. 96-98 establish that an appropriate allocation of joint and common costs is to be recognized in TELRIC studies establishing interconnection rates. Thus, Ameritech's observation at page 16 of its comments that "it is difficult to see how a BOC could sustain monopoly access prices or discriminatory access service, even if it wanted to," is unfounded. Furthermore,

if the FCC were to conclude that manufacturing, information services, and interLATA services were appropriately located within an affiliate which also provided local exchange service, the PUCO's concerns regarding the shifting of common costs to the BOC from the affiliate in the absence of structural safeguards would be multiplied.

Ameritech states at page 19 of its reply comments that the incentives and opportunity for cross-subsidization have diminished with the efficacy of price cap regulation. While Ameritech operates in Ohio under a price-cap regime, that regime does not constrain interconnection access prices. Accordingly, the RBOC sets forth a spurious argument.

Section 272 mandates the structural separation of a BOC subject to the requirements of Section 251(c) of the Act and its affiliate(s) engaged in manufacturing activities, origination of interLATA telecommunications services, incidental interLATA services, out-of-region services, and activities previously authorized as described in Section 271(f). To the extent that the structural separation required by Section 272(b) succeeds in preventing the misallocation of costs as well as the ability to discriminate against unaffiliated interLATA carriers, the PUCO's concerns in this regard will be alleviated. However, even Ameritech acknowledges at footnote 39, page 26 of its comments that there may be forms of discrimination that are imperceptible to end users, hence would not necessarily be discernible by regulators. Ameritech's position that such discrimination would not lead to the acquisition of market power is beside the point: the PUCO's concern is rather that in providing such discriminatory treatment to unaffiliated interLATA carriers, BOCs could compromise the successful entry of competitors into the local exchange market. Contrary to Ameritech's statement at page 28 of its comments, discrimination is not only theoretically possible but is also a significant risk in the

real world that is the locus of state regulatory concerns. Once interLATA relief is obtained by a BOC, and joint marketing restrictions are lifted from competitors offering local and interLATA services, BOC exercise of "imperceptible" discriminatory tactics must not be countenanced.

At page 31 of its comments, Ameritech alleges that BOC affiliate retail rates will be readily discernible, and that below-cost pricing would provide a red flag to regulators. While this allegation is offered in the context of a discussion of the ability of the BOC to raise access prices for all interLATA providers (including its affiliate) and hence maximize BOC access revenues, the PUCO remains unconvinced of the ability of regulators to recognize inappropriate pricing, particularly in a situation in which the BOC affiliate is marketing and selling local as well as interLATA services. As set forth in the PUCO's previous comments in this docket, Ameritech Communications of Ohio (ACI) has filed two applications for operating authority throughout Ohio, to provide basic local exchange service and to provide interexchange service. Assuming arguendo that such authority were granted by the PUCO, ACI could conceivably bundle service offerings so as to obfuscate cost/price comparisons.

For these reasons, and subject to our principal concern regarding retention of state jurisdiction over intrastate matters, the PUCO generally endorses the FCC's proposals for implementing Section 272(b)(1) and Section 272(b)(3) as necessary to prevent anticompetitive behavior. The PUCO takes issue with Ameritech's position at page 37 of its comments that Section 272(b)(1) merely establishes a general, qualitative standard to guide the Commission in its application of the more specific requirements in Sections 272(b)(2)-(5), and supports the positions taken by those commenters in this docket that the more rigorous standards established in the Computer II inquiry regarding structural separation and non-discrimination, rather

than standards consistent with Computer III, be imposed by the FCC. The FCC need look no further than the joint audit it undertook with the Ohio and Wisconsin Commissions, to conclude that more reliance on accounting safeguards is inadequate. Despite such safeguards being ordered by the FCC in *Computer III*, the staff of the FCC, Ohio and Wisconsin Commissions essentially found Ameritech Service Inc.'s, books to be unauditable.

If the FCC were to interpret the language of Section 272 to permit administrative sharing, the misallocation of common costs could, as articulated above, result in anticompetitive behavior not only in the interLATA market but also in the local exchange market. Countervailing regulatory considerations do require stringent separation of BOCs and their subsidiaries under these circumstances, and the FCC should remain steadfast in insisting on imbuing the concept of independent operation established in Section 272(b)(1) with tangible meaning.

At page 56 of its comments, Ameritech argues that while Section 272 is not a vehicle by which customers may force a BOC to provide goods, facilities, services or information that are actually different from what the BOC is already providing to itself, customers are provided with other options by means of the Section 251 requirement that incumbent LECs provide interconnection and network element access on request at any feasible point. Consistent with its comments in this docket, the PUCO asserts that the underlying quality of service provided by the LEC to non-affiliates must be of the same quality as is provided to the affiliate. Contrary to Ameritech's view of alternative options provided by Section 251, the PUCO has observed that entities seeking interconnection with incumbent LECs are handicapped in their knowledge of the latter's network design, and thus are not

assured of obtaining the same quality of underlying service through their interconnection requests.

Finally, with respect to the transfer of network capabilities, the PUCO reiterates its position that, contrary to the assertions of Ameritech at page 59 of its comments, the FCC must assure that BOCs do not circumvent requirements intended to permit sustainable competitive entry by transferring existing network capabilities to an affiliate. In proposing the meaning of "successor or assign" in the context of the Act as consistent only with the spinning off of an entire business, which business thereupon operates intact, Ameritech mounts a specious argument that, if accepted, would render Sections 271 and 272 superfluous. By the same token, the PUCO endorses the observations of AT&T Corporation at page 41 of its comments that permitting BOCs to plan, engineer and construct in-region interexchange facilities and services on an integrated basis with their local exchange business would subvert the Act's purposes.

CONCLUSION

The PUCO urges the FCC to take no action which would preclude states from exercising an appropriate level of regulation of BOC affiliates to preclude the potential for anti-competitive behavior. This section of the Act clearly allows states to impose additional safeguards to promote competition. There are many state issues unique to Ameritech's ACI filing for instance and its interrelationship with Ameritech's Ohio specific alternative regulation plan while the Ohio PUC will be considering in the next few months. The FCC should continue to permit the states to craft solutions to these uniquely local service issues so long as the goals of the Telecommunications Act of fostering competition are advanced. We thank the FCC for the opportunity to file reply comments in this docket.

Respectfully submitted,

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